

ELECTRONIC TRANSACTIONS: SUMMARY OF REVIEW OF CONSULTATION RESPONSES AUGUST 2022



Isle of Man
Government

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In autumn 2021 the Department for Enterprise sought views on the Electronic Transactions Act 2000 and the existing legislative for electronic transactions and digital signatures.

30 responses were received. The feedback received is summarised below, along with the next steps that the Department intends to take.

Proposal 1: That the Electronic Transactions Act 2000 is amended so that electronic transactions to public bodies are made with the bodies' consent.

Certain provisions of the Electronic Transactions Act require that any electronic transactions may be accepted only with the consent of an individual or private sector body. This does not apply to public sector bodies in the Isle of Man, which, though they can turn down transactions on the grounds that they do not meet with technological requirements, must otherwise accept transactions. This has led to a situation in which there has been a blanket exemption for public bodies, except where certain transactions are specified, leading to confusion about the validity of transactions.

The proposal was that the ETA is amended in order to provide that information, signatures and documents may be provided to the public sector with the particular body's consent.

Number responding to question	26
Agree	17
Disagree	6
Neither agree nor disagree	3

Proposal 2: That the Electronic Transactions Act 2000 is amended in order to enable digital signatures to be admitted in legal proceedings for example in court documents and witness statements?

Currently digital signatures cannot be admitted to legal proceedings. The Department of Home Affairs has proposed that the ETA be amended to allow digital signatures to be admitted to such proceedings. This would help IOM Constabulary to progress an electronic criminal justice system which would have considerable benefits in streamlining proceedings.

Number responding to question	26
Agree	21
Disagree	2
Neither agree nor disagree	2

Proposal 3: That the Electronic Transactions (General) Regulations 2017 are amended in order to provide that transfers or mortgages of, or of a share in a registered ship or registered vessel (within the meaning of the Merchant Shipping Registration Act 1991) may be executed electronically

Another of the transactions currently excluded from being executed electronically under the existing Electronic Transactions (General) Regulations 2017 is sale or transfer of ship mortgages. It is proposed that the exclusion is removed to enable such sales or transfers to be undertaken electronically. This, it is considered, will benefit the IOM Ship Registry by making their processes more efficient.

Number responding to question	28
Agree	21
Disagree	1
Neither agree nor disagree	6

Proposal 4: That the 2017 Regulations be amended to allow an electronically transacted power of attorney

Power of attorney is also currently excluded from electronic transaction. "Grant of power of attorney" is a term which describes the situation whereby an individual gives another individual or body the power to carry out actions on their behalf, though it should be distinct from *enduring* power of attorney which is provided to an individual to act on behalf of a person with some form of long-lasting incapacity.

Number responding to question	25
Agree	18
Disagree	3
Neither agree nor disagree	4

Proposal 5: Recognition of eIDAS standards

eIDAS is an EU regulation which sets out a framework and standards for digital signatures and electronic identification. The standards have been considered by some to set the global standards. The proposal was that the eIDAS standards are recognised in law in the Isle of Man.

Number responding to question	25
Agree	22
Disagree	1
Neither agree nor disagree	2

Proposal 6: That the Electronic Transactions Act 2000 be amended to include a general provision for remote witnessing of documents

Some documents, for example those required to be submitted by companies to the Companies Registry under the Companies Acts need to be witnessed. Similarly the Powers of Attorney Act 1983 requires that in order to execute ordinary powers of attorney "two other persons shall be present as witnesses and shall attest the instrument".

This caused some difficulties during the COVID pandemic, such that special provision was made by the Emergency Powers (Coronavirus) (Electronic Transmission of Information – Enterprises) Regulations 2020. These however only operated for the duration of the pandemic.

The consultation proposed that a general remote witnessing provision might be helpful in the Electronic Transactions Act 2000.

Number responding to question	25
Agree	18
Disagree	2
Neither agree nor disagree	5

The next steps that the Department intends to take for each proposal are set out below.

Proposal 1: Next Steps

Many of those responding to the consultation considered that an amendment which would allow public bodies simply to consent to electronic transactions, rather than being obliged to accept electronic transactions (absent a specific exemption) would be a backwards step.

It was felt that Isle of Man Government has a particular role to play in encouraging greater use and provision of electronic services. As the Digital Forum stated in its response, Isle of Man Government should “lead by example”.

Since considering the feedback to the proposal the Department acknowledges that making electronic transactions subject to consent would be a backwards step and that therefore the proposal should not be taken forward.

Further, instead of a situation where there is a general exemption for Isle of Man public bodies for electronic transactions, with specific “exceptions” where services or transactions may be provided electronically, the Isle of Man public sector should be subject only to specific exemptions.

Proposal 2: Next Steps

Proposal 2 received overwhelming support from consultees and it will be taken forward.

Proposal 3: Next Steps

The Department will further examine this proposal, as this may need to be carefully handled, given the high value of ship mortgages, the international nature of such transactions and, consequently, what may be a significantly higher risk of issues.

Proposal 4: Next Steps

Again, the Department will further examine this proposal. It is however acknowledged that the risks in relation to people with an incapacity and interaction with other legislation such as the Powers of Attorney Act 1987, this will need careful consideration.

Proposal 5: Next Steps

There was strong support for recognition in the Island of eIDAS standards. The Department will take forward this proposal, though there further work will need to be undertaken to determine how this can be achieved, e.g. through an amendment to the Electronic Transactions Act 2000, or through secondary legislation.

Proposal 6: Next Steps

The Department will look further at this proposals given the strong support for it, though careful thought will be required to ascertain how such a provision would interact with other legislation, and whether particular kinds of transaction should be excluded.

Other issues

Another issue that has become clear from the feedback to the consultation is that though the intention of the Electronic Transactions Act 2000 was to provide clarity on the legality of electronic transactions in the Isle of Man, there is still significant confusion on this subject.

One step to provide clarity would be for the Department to produce guidance, both for individuals and businesses, on how the legislation works. It is recommended that this guidance be prepared in conjunction with the next steps on the other proposals.

